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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.772 OF 2006

M/s.TRIC Detectives Pvt.Ltd. Petitioner

versus

M/s.Evans Fraser & Co.
(India) Limited Respondent

Mr.Shailesh Shah a/w Neeta Solanki i/by Kiran Jain & Co. for petitioner.

Mr.D.D.Madon, Sr.Counsel a/w Ms.Neeta Rajde i/hy DSR Associates for respondent.

CORAM : A.M.KHANWILKAR, J.

DATE : 22nd November 2007

PC :

1. Heard counsel for the parties. Perused the pleadings and documents on record. The claim of the petitioner is founded on the contract between the parties for supply of Security Services to the respondent company. The petitioner company gave its offer on 16th March 2000 on terms and conditions referred to in the offer letter. The offer was accepted by the petitioner on 13th April 2000. It is not in dispute that the petitioner supplied Security Service Guards and

Supervisors w.e.f. April 2000. For the services rendered, the petitioner raised bills on month to month basis against respondent. It is the petitioner's case that the respondent paid only part payments against the respective bills. The manner in which the bills were raised and part payment was received by the petitioner from respondent, is spelt out in statement Exhibit-A to the rejoinder affidavit (at pages 118-121). On providing adjustment of part payment already made by the respondent and on charging interest @ 18% p.a. for the delayed payments, according to the petitioner, the outstanding amount payable by the respondent was Rs.59,96,149=23 Ps. as on the date of issuing legal notice. In spite of legal notice the respondent has not paid the amount as demanded by the petitioner. As a result, the petitioner has approached this Court by way of present petition.

2. The respondent has filed reply opposing admission of the present petition. In the first place, it is the case of the respondent that the claim in the petition is barred by limitation. It is then contended that the claim was subject matter of proceedings between the parties being Writ Petition No.3050 of 2003 and the respondent

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has already paid the amount in terms of the order passed by this Court in the said proceedings. As a result, the respondent is not liable to pay any further amount to the petitioner. It is then contended that the bills raised by the petitioner on month to month basis were not as per the contractual terms and were excessive for which reason the respondent was not liable to pay the amount as demanded. According to the respondent, it has already paid the amount as was payable in terms of the contractual obligation to the petitioner from time to time and there was no outstanding amount payable to the petitioner. It is lastly contended that the petitioner do not deserve any indulgence as in the past this Court had issued suo motu contempt notice against the petitioner for having made false statement on affidavit. In support of the argument that as the petitioner's entire claim is barred by limitation and in any case substantial portion thereof is barred by limitation, the respondent has relied on the decision of our High Court reported in 1985-Vol.58-Company Cases-255 (Modern Dekor Painting Contracts P. Ltd. Vs. Jenson and Nicholson (India) Ltd.). Counsel for the respondent also argued that there was no agreement between the parties of payment of

interest @ 18% p.a. for delayed payment for which reason said claim cannot be the basis for institution of the company petition.

3. Having considered the rival submissions and going through the record I shall in the first place proceed to deal with the contention that the claim is barred by limitation. It is the petitioner's case that the petitioner had raised bills regarding services rendered from time to time on monthly basis. The respondent, on the other hand, paid only part payments not against the respective bills but lumpsum amount from time to time. The adjustment for such lumpsum payment received has already been provided in the statement Exhibit-A to the rejoinder affidavit (at pages 118-121). The petitioners have approached this Court with specific assertion in para 31 in the context of plea of limitation in the following words :-

> "31. That there are continuous transactions between the Petitioners and the Respondents. That all the transactions are reflected in the books of accounts of the Petitioners. That the transactions are not disputed. Repeatedly part payments have been received. Services have been provided. Accordingly bills have been issued. The same are reflected in the books of accounts. As per the Petitioners books of accounts as on 31/8/2004 a sum of

> Rs.59,86,149=23 Ps. is due and payable by the Respondents to the petitioners. The books of accounts and the amount payable by the Respondents to the Petitioners was not disputed till the winding up notice issued by the Petitioners. That the winding up notice was issued on 3/2/2006. In the circumstances, the Petitioners' claim is within the period of limitation and not barred by law of limitation."

4. The respondent, on the other hand, in the reply affidavit in particular para 3(j) of the Rejoinder Affidavit (at page 83), has generally asserted that the alleged claim of the petitioner and/or in any event the substantial part thereof is barred by limitation. Neither there is specific denial of the petitioner's claim nor a specific defence is taken on the point of limitation in the reply affidavit. According to the learned counsel for the respondent, whether the claim is barred by limitation, the plea is specifically raised or otherwise by the party, it is the duty of the Court to address the same. Indeed, Section 3 of the Limitation Act posits that responsibility on the Court. Nevertheless, in the present case, going by the averments in the petition, I am convinced that the petitioner has justly approached this Court on the assumption that the respondent had been making part payments in lumpsum from time to time to the

petitioner and not against respective bills raised by the petitioner on monthly basis. This position is spelt out from the averments in the petition and in particular paragraph 31 of the petition as referred to earlier. Thus understood, it is a case where the claim of the petitioner has been acknowledged by the respondent from time to time. It is not the case of the respondent that the last payment made by the respondent was prior to three years before the date of institution of the present petition. In my opinion, therefore, the argument that the petitioner's claim is barred by limitation is unacceptable. The decision pressed into service on behalf of the respondent in the case of Modern Dekor Painting Contracts Pvt.Ltd. (supra) is of no avail to the respondent. Accordingly, the objection regarding petitioner's claim being barred by limitation either wholly or in part, does not commend to me.

5. The next argument is that the petitioner's claim was already subject matter of proceedings before this Court in Writ Petition No.3050 of 2003. Even this submission does not commend to me. That writ petition was filed by the Union of Security Guards against the Security Guards'

Board in which, incidentally, the petitioner and respondent were also arrainged as respondents. That is because concerned guards were employed by the respondent and were provided as security guards in terms of the contract between the petitioner and the respondent. The issue in the said proceedings was not in relation to the claim of the petitioner in terms of the bills raised from time to time against the respondent for the services rendered as per the contract as such, but in relation to matters essentially between the security guards and the Security Guards Board for enforcement of the relevant regulations. The direction issued by the Court in the said proceedings requiring the respondents to deposit certain amount or to withdraw the balance amount lying in this Court, cannot be the basis to hold that the dispute between the petitioner and the respondent was adjudicated by this Court as such. That decision, therefore, will be of no avail to the respondent.

6. The fact that this Court had occasion to issue suo motu show cause notice to the petitioner for initiating contempt action on account of filing false affidavit, cannot be the basis to hold that the petitioner’s claim is

untenable or frivolous so as to deny the remedy provided by law to the petitioner under sections 433 and 434 of the Companies Act against the respondent.

7. From the materials on record it is more than clear that at no point of time the respondent while making payment to the petitioner from time to time has positively placed on record that the payment so offered was in full and final settlement of the respective monthly bills. It is, therefore, too much to assume that the respondent had put the petitioner to notice that the amount offered by him was for full and final settlement of the respective monthly bills raised from time to time. The respondent has not been able to establish as to how the bills raised by the petitioner from time to time were excessive. In fact,there is no material on record to suggest that the respondent has made such grievance to the petitioner at any point of time for all this period. Such plea is raised for the first time in the reply filed before this Court. In my opinion, the respondent is liable to pay the deficit amount which is still unpaid to the petitioner in terms of the bills raised from time to time. Assuming that there is no contract

between the parties for payment of interest @ 18% p.a. for the delayed payment, that does not mean that the petitioner is not entitled to claim the outstanding amount in relation to the bills which are still unpaid as per the bills raised by the petitioner from time to time. It is not necessary for me for the time being to examine the argument in detail that as per the terms and conditions, the petitioner was entitled to charge interest @ 18% p.a. in terms of clause-7 of the offer letter or the note mentioned in the bills itself. Those aspects can be considered at the appropriate stage. Suffice it to observe that there is enough material on record to suggest that the respondent has failed and neglected to pay the amount due and payable to the petitioner as per the contract in spite of the legal notice given by the petitioner.

8. In the circumstances, in my opinion as the explanation offered by the respondent is found to be frivolous, the petition deserves to be admitted. Hence, admit.

9. The petitioner shall advertise the petition in two local newspapers, namely, "Free Press Journal", "Navshakti" and in the Maharashtra

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Government Gazette. The petitioner shall deposit an amount of Rs.10,000/- (Rs.Ten Thousand only) with the Registrar (O.S.)/ Prothonotary & Senior Master towards the publication charges within four weeks from today with intimation to the Company Registrar, failing which the petition shall stand dismissed for non prosecution without further reference to the Court.

10. At this stage counsel for the respondent seeks stay of the operation of the present order so as to enable the respondent to carry the matter in appeal. That is a reasonable request. It is ordered that this order shall not be given effect to for a period of four weeks from today.

(A.M.KHANWILKAR, J.)